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PER [Signature]
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON E. BENSON,	:	CIVIL ACTION
Plaintiff	:	NO. 1:CV-00-1229
	:	
vs.	:	Judge Caldwell ✓
	:	Magistrate Judge Blewitt
THOMAS DURAN, et al.,	:	
Defendants	:	JURY TRIAL DEMANDED

PLAINTIFF'S RESPONSE TO DEFENDANT
WILLIAM G. ELLIEN'S STATEMENT OF UNDISPUTED FACTS
AND MOTION FOR SUMMARY JUDGMENT

Plaintiff, Jason Benson, pro se, herein responds to the defendant Eillien's, motion for summary judgment and statement of undisputed facts. Plaintiff avers the following in support of his response:

1. I hereby certify that all of the statements made below are true and correct to the best of my belief, information, and knowledge. I also incorporate as set forth here in full my affidavit submitted in this matter. I also understand that the statements contained herein are subject to the penalty of perjury pursuant to 28 U.S. § 1746 relating to unsworn falsification to authorities.

2. In ¶4, of Ellien's statement of undisputed facts, it's stated that he "was not responsible for, not involved in, the treatment of Benson's epilepsy..." That is not true. Ellien has a duty to make sure that the medication prescribed does not conflict with plaintiff's illnesses and/or harm him. Ellien submitted two (2) documents at (Ex. "B", dated 4/11/00 & 5/17/00); therein Ellien told plaintiff that stopping his medication abruptly was not an option and placed plaintiff on the must take list. Ellien also stated "I shared

that I would note, [with emphasis,] the importance of the Dilantin, [in particular,] being given as prescribed." Ellien also fails to tell the court that regardless of whether or not plaintiff was on the must take list, it is the Department of Corrections Policy to have a prisoner who refuses treatment, sign a "Release From Responsibility For Medical Treatment Form." See Plaintiff's Response to the Adam County Defendant's as well as Defendant's R. Long and W. Ellien's Motion for Summary Judgment at (Ex. "H"). [¶6 addressed above]

3. In ¶8 , Ellien states that plaintiff agreed to take what he prescribed. That is not true. Plaintiff told Ellien that the medication would not be good for him. See Ellien's (Ex. "D" Benson's Deposition pg. 6).

4. In ¶¶12 thru 14, Ellien attempts to make it a fact that plaintiff consented to take the medications and that there was no compulsion or obligation to take the medications. That is not true. See ¶2, above.

5. In ¶¶17 & 18, Ellien states that plaintiff stopped taking the Tofranil, and that it was discontinued by August 17, 1999. If what Ellien states is true, then why was Adams County Prison defendant's issuing plaintiff Tofranil, in accordance with Ellien's prescription and; how did the Gettysburg Hospital come to possess the instructions/prescriptions made by Ellien. See (Ex. "A, B" attached hereto).

6. In ¶¶24 & 25, Ellien states that according to defendant Long, the plaintiff intentionally overdosed on Dilantin, to get high. That is not true. Throughout plaintiff's medical and psychiatric files there are no instances or notations suggesting that plaintiff has taken medications to get high. Furthermore, it is irrelevant.

7. In ¶27, Ellien states that he prescribed Paxil, and plaintiff consented to it's use. That is not true. Plaintiff would not have consented because, he was afraid of the same outcome (as with Tofranil) would have taken place.

8. In ¶¶32 & 33, Ellien first states he discontinued Paxil, due to the side effects, on April 23,2000. However, Ellien also stated that he dsicontinued Paxil, due to non-compliance on April 11,2000. Simply put, Ellien did not know what he was doing or exactly when he did it. Ellien also states that he has seen or ^rteated plaintiff 10 or 11, times and lectured plaintiff about his rejecting medications. It was then and is now, that plaintiff's continous visits with Ellien, left ^tplaintiff no choice but to reject medications; especially when nearl^y everything Ellien prescribed could potentially leave plaintiff in a coma.

9. In ¶36, Ellien states that Benson consented to meds or treatment or something. Plaintiff did not consent to anything. Ellien prescribed what he wanted; it's like Ellien was experimenting on plaintiff or practicing what could and could not be done to a patient.

10. In ¶¶37 thru 44, Ellien states that plaintiff was on a low dosage of Tofranil and that there is no medical evidence which specifically attributes the use of Tofranil, particularly in such low doses, as the cause of seizures. That is not true. Perhaps Ellien believes that the impression of a [neurologist] at Gettysburg Hospital is not specific enough for him. Doctor Mosser, a neurologist at Gettysburg Hospital, found that "¹Seizure Disorder; ²Status Epilepticus due to the abrupt withdrawal of Dilantin plus the effects of other drugs on the seizure threshold." The only drugs that could have had an effect on plaintiff's seizure threshold were the drugs prescribed

by Ellien, i.e., Tofranil/Imipramine. See (Ex. "A,B") attached hereto.

11. In ¶¶45 thru 52, Therein everything is in dispute. Especially Ellien's medical opinion, to a high degree of medical certainty; item 10's (above) exhibits totally contradicts that. Ellien's opinions, even to a high degree of medical certainty, are essentially self-serving assertions and why should this Court deem his conclusions conclusive when, the plaintiff submitted numerous interrogatories and admissions which were objected to by Ellien as being answerable by an expert only. Here, Ellien is suggesting that because plaintiff is pro se, there is no logical reasoning that exist to warrant him answering question with his professional opinion, and to a high degree of medical certainty. However, on the flip side of the sword, if you will, Ellien has opined to various matters to a high degree of medical certainty (of course) and pursuant to the penalties of perjury. Ellien should not be allowed to have it both ways because, it suggests that his irreverence makes him immune to the Rules of this Court and the Laws of the United States. Furthermore, with respect to Ellien's mistaken assumption that the plaintiff failed to exhaust the administrative remedies required by the [PLRA], is clearly a waste of the Court's valuable time. Plaintiff exhausted all of the remedies necessary. See Plaintiff's Response to Ellien's Motion to Dismiss (Ex. "A,B,C-et cetera et cetera").

Ellien also argues that "Benson's anxiety and panic symptoms are such that no lay jury could reasonably conclude that they constitute 'serious' medical conditions in the absence of expert testimony. Without expert testimony, a jury is not in the position to be able to determine whether these conditions constitute 'serious' medical conditions." Ellien's Motion for Summary Judgment § B, ¶2.

Again, Ellien is incorrect in that, this matter pertains to anxiety and panic symptoms. This proceeding is about Ellien prescribing drugs that disagree with the plaintiff's epileptic condition and Ellien states in his Verification numerous times that "We reviewed the indications, benefits, side effects, and adverse effects and precautions,..." Everytime Ellien tried to prescribe a medication, plaintiff would ask about side effects or if the drug would be in conflict with his epilepsy; regardless of what plaintiff said, Ellien would prescribe whatever he wanted even after reviewing and knowing there were adverse side effects in the medications. And, without a doubt, that is subjective knowledge; especially, when the information came straight out of a desk-top [P.D.R.] or Physician's Desk Reference.

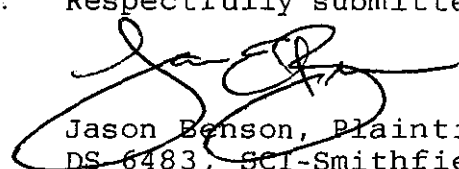
Therefore, the plaintiff is asking this Honorable Court to take judicial notice of the fact that a serious medical need that a jury could take note of without expert testimony would be something of the nature of "a person who has seizures has been taken off of seizure medication." See City of Revere v. Massachusetts General Hospital, 463 U.S. 239, 103 S.Ct. 2979 (1983). Likewise, this sort of situation (the need for expert testimony) was addressed by the Third Circuit Court of Appeals in Parham v. Johnson, 126 F.3d 454 (1997), wherein the District Court dismissed Parham's, case for lack of expert testimony but the appeals court thought the dismissal was startling because Parham's, motion for counsel was denied. Meaning, that Parham's, case didn't warrant expert testimony hence, no counsel. The Appellate Court, reasoned that that ruling was incorrect and remanded the case for appointment of counsel for the purposes of securing expert testimony.

The facts are, that this Court denied counsel to the plaintiff and if it's because this Court believes that expert testimony isn't needed then the defendant's must be made aware of that. However, if the Court believes that the defendant's argument is on point and must be ruled on according to their case law; then it's only evenhanded play, that the Court appoint counsel for the purposes of securing expert testimony or in the alternative, the Court could appoint an expert witness for plaintiff to depose. In the case sub judice, there is obviously a conflict in the interpretation of medical evidence and/or standards, which mandate counsel being appointed. See Tabron v. Grace, 6 F.3d 147,156 (3rd Cir.1993); Tucker v. Randall, 948 F.2d 388,392 (7th Cir.1991)(citing conflicting medical evidence as a reason to appoint counsel.). Thus the plaintiff has no choice but to reinstate his request for counsel pursuant to 28 U.S.C. § 1915.

WHEREFORE, for the reasons stated above, the plaintiff respectfully requests that this Honorable Court deny defendant Ellien's motion for summary judgment; appoint counsel for the purpose of obtaining expert testimony or in the alternative, appoint an expert witness for the plaintiff to depose.

Respectfully submitted,

Date: January 23, 2002


Jason Benson, Plaintiff
DS-6483, SCI-Smithfield
1120 Pike St., P.O. Box 999
Huntingdon, PA 16652

THE GETTYSBURG HOSPITAL

CONSULTATION REPORT

0300410351 17-75-56

NAME JASON BENSON

PERSON, JASON E
KANSLER, DAVID F MD

DATE AND TIME OF REQUEST 3/9/99 0900

CZC 7A 09/22/1976 22Y

TO DOCTOR DR MOSSEN

OPINION
ONLYTREAT AND
FOLLOW

REASON FOR CONSULTATION:

RECURRENT SEIZURES

REQUESTING PHYSICIAN: DR KANSLER

DATE
3/9/99TIME
0910

SIGNATURE DR MOSSEN

PERSON NOTIFIED
OF REQUEST

DEB

REPORT OF CONSULTATION (Findings, Diagnosis, Recommendations)

22Y.O WM WITH TWO EPILEPSY SINCE 12 Y.O. PH. OF "PETT MAL" (PROBABLY COMPLEX-PARTIAL SEIZURES) + GENERALIZED. EEG'S 3/89 + 4/90 → (1) TEMPORAL FOCUS EEG 8/97 @ 2 AM FOR SEIZURES 2° TO PT. DIC OF DILANTIN + DENG USE. CLOMIDRANE
A SERZONE, ADDYAN, IMIPRAMINE PTA FROM CO. PRISON. R. IV. DILANTIN TGM. LAB OK BUT AWOL + CO₂ CW POST-ICUTAL STATE. HAD TIT SE THS AM 0440 → ONSET IN SLEEP DIED DILANTIN X 4 MOS

EXAM: NECK SUPPLE. MS. - ALERT + ORIENTED. NO ADHESION. MEMORY OK CN - VIS FIELDS ✓ FUNDUS ✓ NO PUPIL HOB. PUPIL, EYES - PUPILS ✓ (1) NYSTAGMUS IN ALL DIRECTIONS (CW DILANTIN LOAD.) HEART - TONGUE - MOUTH - NO ORAL POWER R=L TONE - SEVS - DTR'S 1-2+ R=L TOES M.

EEG - TODAY → (1) DISCHARGE
IMP. (1) SEIZURE DISORDER, (2) STATUS EPILEPTICUS @ 2 AM.
2° TO DIC OF DILANTIN ± EFFECTS OF OTHER DRUGS ON SEIZURE THRESHOLD
SUGGEST - ✓ DILANTIN LEVEL IN AM IF > 10 BUT < 20
R. 200 MG PO BID. OR PREVIOUS DOSE KNOWN TO BE EFFECTIVE

SIGNATURE OF CONSULTANT

CONSULTATION REPORT

White - Medical Records

Yellow - Consulting Physician

THE GETTYSBURG HOSPITAL - MEDICATION ADMINISTRATION RECORD

GENERATED: 08-30-99 08:18pm DIAGNOSIS: RENSON, JASON E 177556
 FOR PERIOD: 08-31-99 07:01 *HSEIZURES E2 E207-A 0300410351
 THROUGH: 09-01-99 07:00 ALLERGIES: AGE: 22 SEX: M
 CHECKED BY RN: *[Signature]* BUTALBITAL HGT: 5'8 WGT: 181.50
 PAGE 3 OF 3 *** More allergies on file *** KAMSLER, DAVID F

START	STOP	ROUTE	MEDICATION	0701-1500	1501-2300	2301-0700
08-30 0800	09-29 0700	IV	EPINEPHRINE 1:10,000 ADRENALIN 1:10,000 1DOSE=1DOSE STD ANTI-ARRHYTHMIA ORDERS STD ANTI-ARRHYTHMIA ORDERS 1MG IV PUSH GIVE FOR ASYSTOLE GIVE FOR			
			V-FIB, PULSELESS V-TACH			
08-30 0800	09-29 0700	PO	ACETAMINOPHEN TYLENOL 650MG=2TAB EVERY 4 HOURS PRN AS NEEDED FOR PAIN			
08-30 0900	09-06 0800	PO	ACETAMINOPHEN W/ OXYCODONE PERCOCET, ROXICET 1TAB=1TAB EVERY 4 HOURS PRN AS NEEDED FOR PAIN	0740G (HG)		
08-30 0800	09-29 0700	PO	AL/MAG HYDROXIDE TC (MAALOX) MAALOX TC 15ML=15ML EVERY 4 HOURS PRN SHAKE WELL BEFORE USING AS NEEDED FOR INDIGESTION			
08-30 0800	09-29 0700	PO	LORAZEPAM ATIVAN 1MG=1TABLET EVERY 6 HOURS PRN AS NEEDED FOR ANXIETY			

INJECTION SITE CODE

1 RVG 4 LDG 7 RLT 9 RD
 2 RDG 5 LAT 8 LD 10 RAT
 3 LVG 6 LLT

SITE ROTATION FOR HEPARIN,

NITROGLYCERIN OINTMENT, INSULIN
 A RTARM C RTTHIGH B LTABD
 B RTABD D LTTHIGH F LTARM

IF A MED IS NOT GIVEN, CIRCLE THE SCHEDULED
 TIME AND INITIAL DOCUMENT REASON IN NURSES
 NOTES IF MED IS GIVEN LATE, WRITE ACTUAL TIME
 BENEATH SCHEDULED TIME AND INITIAL

INITIAL	NAME & PROFESSIONAL DESIG	INITIAL	NAME & PROFESSIONAL DESIG	INITIAL	NAME & PROFESSIONAL DESIG
<i>[Signature]</i>	<i>[Signature]</i>	HG	<i>[Signature]</i>		

RENSON, JASON E

E2 E207-A MRH 177556

ACCT# 0300410351

07

09

14

21 22

THE GETTYSBURG HOSPITAL - MEDICATION ADMINISTRATION RECORD

GENERATED: 08-30-99 08:18pm DIAGNOSIS: BENSON, JASON E 177556
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 CHECKED BY RN: *[Signature]* BUTALBITAL HGT: 5'8 WGT: 181.50
 PAGE 1 OF 3 *** More allergies on file ***KAMSLER, DAVID F

START	STOP	ROUTE	MEDICATION	0701-1500	1501-2300	2301-0700
08-30 2200	09-29 2100	PO	IMIPRAMINE HCL (TOFRANIL) TOFRANIL 100MG=2TABLET AT BEDTIME		72	
08-30 2200	09-29 2100	PO	NEFAZODONE SERZONE 200MG=1DOSE AT BEDTIME NON FORMULARY MED, FOR REORDER NOTIFY PHARMACY 24 HOURS PRIOR TO LAST DOSE		22	
08-30 1400	09-29 1300	PO	PHENYTOIN SODIUM DILANTIN 100MG=1CAP THREE TIME A DAY	09 14	21	
08-31 0700	09-30 0600	IV	SODIUM CHLORIDE 0.9% NACL 0.9% 1DOSE=1DOSE FLUSH IV SITE AS NEEDED FLUSH ACCORDING TO APPROPRIATE PROTOCOL	DC's 09	21	

INJECTION SITE CODE
 1 RVG 4 LDG 7 RLT 9 RD
 2 RDG 5 LAT 8 LD 10 RAT
 3 LVG 6 LLT

SITE ROTATION FOR HEPARIN,
 NITROGLYCERIN OINTMENT, INSULIN
 A RTARM C RTTHIGH F LTABD
 B RTABD D LTTHIGH F LTARM

IF A MED IS NOT GIVEN, CIRCLE THE SCHEDULED
 TIME AND INITIAL DOCUMENT REASON IN NURSES
 NOTES IF MED IS GIVEN LATE, WRITE ACTUAL TIME
 BENEATH SCHEDULED TIME AND INITIAL

INITIAL	NAME & PROFESSIONAL DESIG	INITIAL	NAME & PROFESSIONAL DESIG	INITIAL	NAME & PROFESSIONAL DESIG
<i>[Signature]</i>					

BENSON, JASON E

E2 E207-A MR# 177556

ACCT# 0300410351

07

09

14

21 22

D

Exhibit B
Pg 1**THE GETTYSBURG HOSPITAL****EMERGENCY DEPARTMENT REPORT**

NAME: BENSON, JASON E
MR: 177556

8-310
DATE OF VISIT: 08/30/1999

CHIEF COMPLAINT Seizure

HISTORY: The sheriff that transported this patient from prison says he was told that this patient had a small seizure about an hour and a half ago and then a larger one more recently that prompted the decision to transport this gentleman to the Emergency Department. He was noted to be bleeding from his mouth following the second seizure. He was apparently transported to the Emergency Department in the police cruiser in a conscious condition but shortly after arriving here, had another seizure which occurred in our parking lot area. This was observed by paramedic staff and was observed to be significant. When I went out to the parking lot area, he was noted to be apparently post ictal with bloody mucous coming from his mouth. His respirations were somewhat labored. He was transported into the Emergency Department for further evaluation.

PAST MEDICAL HISTORY Positive for seizures in the past. He has been worked up with neurology consults, numerous CT's and I believe EEG. It is believed he has a seizure disorder although he apparently had seizures prompted or precipitated by his multi drug use which includes cocaine, marijuana, and ecstasy. He was seen here a couple of days ago by Dr. Stemour for injuries related to a scuffle with prison guards. He apparently was maced at that point but was treated and released with a diagnosis of multiple contusions.

MEDICATIONS Faxed to us from prison are Serzone, Ativan prn and Imipramine. He apparently is on no anticonvulsants.

PHYSICAL: On arrival in the Emergency Department the patient is pale, diaphoretic, unresponsive with somewhat snoring respirations. O2 saturation initially was about 88% range. He was somewhat resistant to maintaining oxygen mask on his face but as he became more lucid he became calmer and his O2 saturation improved into the high 90's. Within the period of 15 minutes or so in our department, he was able to look towards me in response to his name being called and able to follow simple commands such as opening his mouth.

HEENT	He has a little minor ecchymosis in his left postauricular area. Pupils are equal TM's, nares unremarkable. Exam of his mouth I believe shows an abrasion of the right lateral tongue.
NECK	Appears to be supple.
LUNGS	Clear anteriorly.
HEART	Regular rhythm.
ABDOMEN	Soft.
EXTREMITIES	He was initially wearing handcuffs but was switched to leg shackles by the sheriff that brought him in. He seems to have movement in all his arms and legs.

TREATMENT/PLAN: Since this seizure witnessed by us in the Emergency Department was his third in a short period of time, he was given a loading dose of Dilantin 1 gram IV. Blood work has been drawn which shows a white count of 17.6 with a normal H&H and platelet count. Chem panel 2 is pending.

Exhibit B

THE GETTYSBURG HOSPITAL

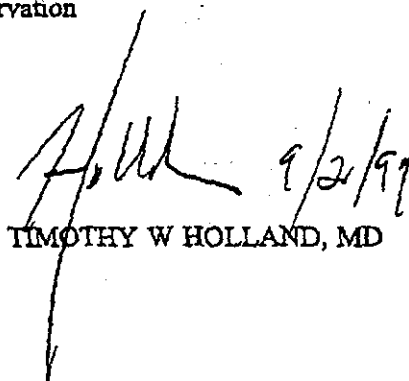
EMERGENCY DEPARTMENT REPORT

NAME: BENSON, JASON E
MR: 177556

I plan to speak to the next doctor up for unassigned admission about this patient With three seizures in a short period of time, I feel that he should be admitted to the hospital for more close observation

IMPRESSION: Multiple seizures

TWH dli
DD 08/30/1999 DT 09/01/1999 11 34

 9/2/99
SIGNED BY TIMOTHY W HOLLAND, MD